

ANDOVER BOARD OF HEALTH

Minutes

June 7, 2010, 6 P.M.

1st Floor Conference Room

36 Bartlet Street

The Board of Health Meeting was called to order at 6:03 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- Regular Meeting of May 10, 2010

Motion by Ms. Martin seconded by Ms. Kellman to approve the Minutes of the Meeting of May 10, 2010. Dr. Miller abstained because he was not present at the May 10, 2010 Meeting.

II. Appointments & Hearings

- **6:00 p.m. – David Kiu for Peking Garden, Status Update & Review** – Present were Mr. David Kiu and his contractor, Maureen Lee. Ms. Martin noted that Mr. Carbone performed an inspection on June 1, 2010 and found a couple of critical violations. Ms. Martin was concerned that these issues have been going on for close to a year. Mr. Carbone replied that the Board started working with Mr. Kiu last July and tried several options to help him fix the violations. He hired a contractor to perform monthly inspections and when he left the January, 2010 Meeting, the Board expected there to be no more critical violations. However, the violations are continuing even with the use of the contractor. At last week's inspection Mr. Carbone found pork marinating at room temperature. In February, March, and May there was garlic and oil left at room temperature. The Board noted that when one violation issue gets solved, another one arises. Mr. Kiu stated that he knows there is weakness in the employees' behavior and found that with having Maureen there as enforcement, the behavior has gotten better. As far as the marinated pork being at room temperature, Mr. Kiu admitted that he misunderstood and thought it was alright to put the pork in the cooler after two hours, but Dr. Miller asked if the regulations say it is alright to leave out food for two hours, and Mr. Carbone verified that they do not. Mr. Kiu stated that Mr. Carbone explained to him that doing that was unacceptable and that from now on it won't happen again because he has now read the regulations and understands. Ms. Martin stated that the storage of meat at room temperature was previously explained to Mr. Kiu as against the regulations, and questioned if it was his staff or his knowledge that was lacking, and why this was still happening after a year. Mr. Kiu replied that he was still working on correcting the violations, but that the best way to marinate is at room temperature. Dr. Miller stated that Mr. Kiu had said that he didn't know about the regulations and agreed that his employees are reticent, but that Mr. Kiu was the leader and should take more responsibility and be more strict with his staff. Ms. Lee stated that during the first three months of her

inspections Mr. Kiu was present, and then the last six months she has worked with the staff. There are two people in charge, both at the front counter. She stated that there have been some improvements. The front line staff is knowledgeable, but there is still a cultural disconnect because the older cooks are from a different generation and issues arise when a younger person supervises them. Another challenge is that the cooks understand temperature and standards, but there are still problems with them applying that knowledge. Ms. Lee is working on explaining to the staff why certain things are required as well as helping them to understand what they are doing to cause some of the violations. Ms. Lee has found that the cultural differences are very common, but the cooks have been willing to listen to her and to the person in charge now, although progress is slow. Ms. Martin stated that Mr. Kiu may have to make staff changes; he is the person in charge and the success of his restaurant is his responsibility. Ms. Kellman stated that she noted the same issues arising over and over again in the inspection reports. Mr. Kiu responded that the employees do take him seriously and once they understand, they do improve their behavior. They understand the old ways cannot be used here and following the food code is very serious, but once in a while they do revert back to their old ways. He does read all inspections to staff and discusses cleaning procedures as well as proper handling of food.

Ms. Martin suggested giving Mr. Kiu three more months of contractual inspections with Ms. Lee, and if there are any critical violations during that time, he would have to come back before the Board. At this point, there should no longer be any violations since Mr. Kiu has had a year to comply. The Board was concerned because Mr. Carbone did his inspection during the day when the restaurant was not so busy and asked Ms. Lee if she did any of her inspections during the peak busy time, such as in the evening, and she replied that she has. Ms. Kellman asked Mr. Kiu if he thought about using a different process where the person in charge checks on the staff to make sure proper procedures are being followed, and he replied that he did set up a time schedule to check the meats every two hours and a checklist of systems to be followed. However, the Board noted that it seems the staff still reverts back to its old ways and the cultural problems are not going to go away. Mr. Kiu has to realize he is the owner and if his staff doesn't follow the rules, his business could be closed.

Motion by Ms. Martin to suspend the Hearing until the September 13, 2010 Board of Health Meeting, with the condition that monthly inspections will continue with the contractor, and if there are any critical violations, Mr. Kiu will have to appear at the next scheduled Board of Health Meeting. Dr. Miller seconded, but Ms. Kellman requested discussion.

Discussion – Ms. Kellman had concerns because in January, 2010, the same motion was made by the Board and the same promises were made by Mr. Kiu, but critical violations are still occurring. At some point, Ms. Kellman felt the Board should take a stronger stand. In other countries they do not have the same regulations, but in this country we have rules and it is the Board of Health's responsibility to make sure the rules are enforced. The Board understands that there has been some progress, so it was willing to give Mr. Kiu another chance.

Vote taken on the previous motion by Ms. Martin. Ms. Martin, Aye, Dr. Miller, Aye, Ms. Kellman, Aye. Unanimous approval.

- **6:30 p.m. – Fish Brook Watershed Advisory Committee (FBWAC)** – Present were several of the members of the FBWAC; Steve Boynton, Chairman, John Zipeto, David Adelman, and Pat Donahue, as well as Jack Petkus, Director of the Department of Public Works. Ms. Martin told them the Board wanted to welcome the members and to show them appreciation for all the incredible work they have done over the years. Mr. Boynton informed the Board that the Committee originally started because of concern of salt in the Fish Brook watershed and how the salt shed may have affected those levels. Mr. Carbone has been working on getting the salt shed relocated and has come up with a couple of dates that Mass DOT may be able to meet with him and the businesses on River Road. Mr. Boynton pointed out that the biggest issue is to have low application of salt. He also stated that there is a need to look long term at the runoff of snow and wet weather into the watershed, so they need more time. Mr. Adelman stated that they now had a baseline, but to be truly accurate, they would need to monitor at the Fish Brook Monitoring Station for at least ten to twenty years. The committee would like to see Andover establish a low salt application program for the Town maintained roads in the Fishbrook Watershed area. Also the relocation of the Salt Shed is a very high priority. The last meeting produced some preliminary designs, but nothing further has been done. There are still several obstacles that have to be worked out such as appropriating money once the location is determined, and there is also the issue of lack of potable water, because there is no water at Old River Road. Mr. Adleman, Mr. Boynton, and Ms. Vaughn at the Andover Water Treatment Plant would like to keep the instrumentation going to see what is being discharged and hope to get a baseline level with a goal to get the salt level down to where it was before. They would like to keep up with salt loading levels and evaluate how much is entering the watershed, and would like to get more data from the State.

Ms. Martin asked for details of the Committee's start. Mr. Zipeto informed the Board that they first began in 2004 as the Fish Brook Initiative (FBI) and then the mission of what they wanted to do became more fixed, so the FBI recommended setting up the FBWAC. The former Director of Public Health, Everett Penney, Jr. wanted to get a handle on the salt levels, as well as the Mobil station contamination and arsenic levels. Ms. Martin told the Committee members that the Board of Health thought they did great work and really appreciated the hours and their expression of interest in continuing the FBWAC. Mr. Carbone will send a Memo to the Town Manager, Mr. Stapczynski, advising him of the recommendations of the FBWAC.

III. Discussion

- **Flouridation of Drinking Water (Continued)** – Ms. Martin stated that last month the Board had a brief discussion concerning whether the town should continue the fluoridation of the drinking water. Since Dr. Miller was not present at the May 10, 2010 Meeting, the Board wanted to get his opinion. Ms. Martin did some research

and found that there were many studies conducted globally and within the United States. One of her concerns had been that a lot of the information provided last month was not gathered in this country which has tighter controls. Another concern is that young children get too much fluoride from drinking water and formula that mixes with water. The argument to discontinue use of fluoride in the water is that people are now more concerned with their health and are going to the dentist more frequently than in the past. Dr. Miller stated that the first way he looks for answers is through the evidence: such as retrospective study, mega analysis of data, or blind studies. He found no problem with the old data from 1982. He provided the Board members with some information he researched also. Ms. Martin commented that fluoridation of the drinking water started in the 1960's before people could get fluoride treatments at their dentist's offices. Dr. Miller informed the Board that fluoridation definitely helps people have fewer cavities, and the toxic level is known. The Town of Andover uses a very low dosage, which is way below toxic. However, too much fluoride can cause a cosmetic problem called fluorosis. The Board will take no further action.

- **Training Component - Video – Conducting a Public Hearing** – The Board decided not to view the video until the next Board of Health Meeting on July 12, 2010.
- **Abbot Pond Condominiums @ Michael Way – Concerned Citizens (Not on Agenda)** – Joyce Flanagan, who is on the Condominium Board, and Emilie Evans, residents of Andover who live in the Abbot Pond Condos asked to speak with the Board about a serious concern with one of their neighbors. This has been a continuing hoarding issue that is affecting their lives and is bordering on harassment. Besides the hoarding, fire hazards, and mold concerns, the resident comes to their homes asking for things. The Condo Association can only enforce the rules outside and in common areas outside her unit. Mr. Carbone explained that some of these issues are not health related, but may be police matters. They are very concerned because they are aware that the Board of Health has been dealing with this resident since 2008 and, in their opinion, nothing is being done to rectify the problem. The Board explained to Ms. Flanagan and Ms. Evans that they are aware of the issue with this resident, but their hands become tied when the resident does not allow entrance to her property. Originally in 2008, the Fire Department called in the Health Division, but once an Inspector arrived, the Fire Department was gone and the resident did not allow the Health Inspector access. There are several legal implications that have to be considered. Elder Services were not able to get involved because the resident is not old enough, so she is not considered an elder at risk. Due to her not allowing access to her condo, the Town would need a Court Order which would then involve the hiring of Town Counsel. The Board explained that there are specific steps that have to be taken; it needs Town Manager approval as well as approval to utilize Town Counsel. The Board explained further that this type of situation is a long process, with other issues in the past with this resident in another area of Town.

Mr. Carbone explained that some of the issues addressed are not health related, but may be police matters. He informed them that he had spoken with Town Counsel recently, and was contacting the resident's Attorney. Mr. Carbone made sure that Ms.

Flanagan and Ms. Evans realized that even if we proceed with Town Counsel to court, there is no guarantee that a judge will give us permission to enter the resident's property. Mr. Carbone suggested that if Ms. Flanagan and Ms. Evans could give him affidavits of what they have witnessed, that would be very helpful. Mr. Carbone told them that he would call Town Counsel to see what can be done and then contact Ms. Flanagan, since she is on the Condo Board, to give her an update by Friday.

IV. Old Business

- N/A

V. Definitive Subdivision Plans

- N/A

VI. Plan Review

A. D.W.R.P. Variances/Local Upgrade Approval

- **204 Haggetts Pond Road, LUA to allow Offset from SAS to ESWT from 5' to 4' (Not on Agenda)** – Mr. Carbone explained to the Board that this was a failed septic system, and the design was prepared over the weekend by Merrimack Engineering. Mr. Carbone recommended approval of the LUA.

Motion by Dr. Miller, seconded by Ms. Martin to approve the LUA to allow offset from SAS to ESWT from 5' to 4' at 204 Haggetts Pond Road. Unanimous approval.

VII. Staff Reports

A. Director's Report:

- **Luky 7 Sale of Tobacco to a Minor** – Mr. Carbone informed the Board that Luky 7 is retail space at Brickstone Square and this was the second violation, so a representative of the company will be in for the next Board of Health Meeting on July 12, 2010.
- **Update on The Grocery Bag** – Mr. Carbone informed the Board that The Grocery Bag was still closed for renovations, but had started the work without permits. The owner was trying to retire and let his son take over. They now need a new hood system, so Health Inspector, Patricia Crafts, has told them they have to come into the Health Division with new plans from the contractor.
- **Update on Interns** - Mr. Carbone informed the Board that the first Intern, Kerri Barton, has started her Internship at ten hours per week and her project

is on Lyme Disease education and prevention. The second Intern, Kirstin Heinrich's project is to coordinate with Conservation and Avis to create maps with loops where children can walk to school and to develop a Walking School Bus Project.

- **Update on Dufton Road** – Mr. Carbone explained that he plans on speaking with Town Counsel about the debris and materials that are stored in the yard. Mr. Carbone stated that there are a couple of things going on with this property. The bank is trying to evict the tenant and the homeowner says the bank did not foreclose on the property and that he still owns the house. The bank issued an eviction notice for him and the other tenant. There are several lawsuits going on so Mr. Carbone would like to speak with Town Counsel about the situation. Ms. Martin stated that the property cleaned up a little, but then got bad again; there was either a Building Division or Court ORDER for the homeowner to clean up by July 1, 2009.
- **Important Dates:**
 - June 8th @ 9 a.m. – Wood Hill Student Report.
 - July 12th @ 6 p.m. – Board of Health Meeting
 - July 23 to August 2 – Director's Vacation
 - August 9th @ 6 p.m. – Board of Health Meeting
 - September 13th @ 6 p.m. – Board of Health Meeting
- **Nurses' Report for May, 2010** –The Nurses' Report was for informational purposes only.
- **Inspectors' Reports for May, 2010** – The Inspectors' Reports were for informational purposes only.

VIII. Board Member Reports

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 8:17 p.m. Unanimous approval.